IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Date of decision: 10th April, 2006

First Appeal No. 60 of 2004

Kulwant Kaur Sidhu
D/o Sh. Harbir Sidhu
@ Harditya Singh Sidhu
R/o 12/1, Sarvapriya Vihar
New Delhi.
Also at:-
Haripur Kalan, Pargana Parwadoon
Tehsil & Distt. Dehradun. …….Appellant/Defendant

Versus

Smt. Rahiman Bai Guddi
@ R.B. Guddi Chaudhary (deceased)
W/o late Sh. C.L. Chaudhary
R/o 180, Jaipuria Mills
Clock Tower, Delhi- 110007.

Also at:
H-84, Phase-I, Ashok Vihar
Delhi- 110052
(through legal heirs)

i. Meena Chaudhary Sharma
W/o Late Sh. Rai Kamal Sharma
R/o H-16, DDA Flat, Phase-I
Ashok Vihar, Delhi- 110052.

ii. Asha Chaudhary Bhattacharjee
W/o Sh. Ashish Bhattacharjee
R/o H-84, Phase-I, Ashok Vihar
Delhi- 110052.
& others ……Respondents/Plaintiffs

Mr. Sudhanshu Dhulia, Senior Advocate, Mr. Vipul Sharma and Mr. Rajeev Bisht, Advocates for the appellant.
Smt. Meena Chaudhary Sharma, respondent No. 1 in person.
Mr. D.S. Chaudhary and Mr. Menka Tripathi, Advocates for respondents Nos. 2 to 4.

A.F.R. (Approved for Reporting)
Not Approved for Reporting

(Hon. The Chief Justice)

(Hon. Mr. Justice Prafull C. Pant)

Date: 10.04.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the judge for signature.

Judgment Reserved

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iii. Naresh Lal Chaudhary
S/o Late Sh. C.L. Chaudhary
R/o 294, SFS Flats, Phase-IV
Ashol Vihar,
Delhi- 110052.

iv. Rajiv Lal Chaudhary
S/o Late Sh. C.L. Chaudhary
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Corum: **Hon'ble Rajeev Gupta, C.J,**
Hon'ble Prafulla C. Pant, J.

Hon'ble Prafull C. Pant, J. (Oral)

This appeal, preferred under Section 96 of Code of Civil Procedure, 1908, is directed against judgment and decree dated 20.08.2004, in Original Suit No. 407 of 1996, passed by learned Additional District Judge/Fast Track Court I, Dehradun, whereby said suit has been decreed in favour of the plaintiff, granting injunction against the defendant/appellant.

2. Brief facts of the case are the plaintiff/respondent-Rahiman Bai Guddi, instituted aforementioned suit No. 407 of 1996 with the pleadings that she was owner and in possession of khata No. 186, plot No. 25/3, measuring area 0.300 and plot No. 46/11, measuring area 0.814 in village- Haripur Kalan, Tehsil and District- Dehradun. It is further pleaded that she was recorded tenure holder of aforesaid land, which is shown by letters 'Aa' 'Ba' 'Sa' 'Da' with its boundaries in the map annexed with the plaint. From the year 1969 to 1979, on aforesaid land, plaintiff used to run a factory in the name and style- M/s Jai Chemicals, which was ancillary unit of Indian Drugs and Pharmaceuticals Limited, Rishikesh. On the east of said land, defendant purchased a plot and constructed her house. In the south of defendant's aforesaid plot, there is a ra-sta land for his approach towards the main road. In the year 1996, taking advantage of the absence of the plaintiff, defendant opened her door towards west over the land, shown by letters 'Aa' 'Ba' 'Sa' 'Da' and by collecting soil,

made attempt to give shape of raasta over the strip of aforesaid land. The defendant has no right to have passage over this land. Hence the suit for injunction against the defendant/appellant, was instituted by the plaintiff/respondent for injunction not to interfere in the peaceful possession of land ‘Aa’ ‘Ba’ ‘Sa’ ‘Da’. Also, a mandatory injunction was sought that the defendant should close his western door towards the disputed land. (During the pendency of this appeal, after death of plaintiff, her legal representatives were substituted).

3. The suit was contested by the defendant (present appellant) before the trial court, who filed her written statement, denying the contents of the plaint allegations. But it is admitted in the written statement that the defendant has constructed her house over the plot on the east of the disputed land and has opened a door towards the western side. It is further pleaded by the defendant in the additional pleas the the plaintiff is not the owner of the disputed raasta land, which is shown to be part of ‘Aa’ ‘Ba’ ‘Sa’ ‘Da’ in the plaint map. It is denied by her that the plaintiff is owner and in possession of the entire land shown in the plaint map as ‘Aa’ ‘Ba’ ‘Sa’ ‘Da’. It is alleged that land of plot No. 180 and 181 are jointly owned by the defendant with one Ved Prakash. It is further pleaded that defendant along with other villagers uses the disputed passage from the time prior to the purchase of the plot, shown in the east of the disputed land. Lastly, it is pleaded that the suit is not legally maintainable in the civil court.

4. Learned trial court on the basis of the pleadings of the parties, framed the following issues:-

1. *Whether the property in suit, which includes disputed passage is owned by and in possession of the plaintiff?*
2. *Whether the suit is legally not maintainable?*
3. *To what relief, if any, the plaintiff is entitled?*

After recording the evidence and hearing the parties, the learned trial court found that the plaintiff has been able to establish her bhumiadhari rights and possession over the land in question and accordingly decreed the suit with costs against the defendant, directing her not to interfere in the peaceful possession of plot No. 25/3 and 46/11 of village Haripur Kalan, shown by letters *'Aa' 'Ba' 'Sa' 'Da'* in the plaint map. It is further directed by the trial court that the soil collected by the defendant over the disputed land with intention to give a shape of raasta land be removed, and door 'ka' (shown in plaint map), opened towards western side of the plot of the defendant be closed. Aggrieved by said judgment and decree, the defendant has preferred this appeal.

5. We heard learned counsel for the parties and perused the record.

6. Learned counsel for the defendant/appellant, has argued that the suit in question is barred by Section 331 of U.P. Zamindari Abolition and Land Reforms Actm 1950. Sub-section (1) of said Section, reads as under:-

"331. Cognizance of suits, etc. under this act *–(1) Except as provided by or under this Act no court other than a*

court mentioned in column 4 of Schedule II shall notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in column 3 thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application:

Provided that whether a declaration has been made under Section 143 in respect of any holding or part thereof, the provisions of Schedule II in so far as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.

Explanation- If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.

(1-A) Notwithstanding anything in sub-section (1), an objection that a court mentioned in column 4 of Schedule II, or , as the case may be, a civil court which had no jurisdiction with respect to the suit, application or proceeding, exercised jurisdiction with respect thereto shall not be entertained, exercised jurisdiction with respect thereto shall not be entertained by any revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all case where issue are settled, at or before such settlement, and unless there has been a consequent failure of justice,"

The above provision, makes it clear that suit in respect of the remedy, which is available under U.P. Zamindari Abolition and Land Reforms Act, 1950, before the revenue

court was not to be entertained by other courts. There is no doubt that remedy of injunction is not available in the revenue court. The trial court has decided issue No.2 in favour of the plaintiff on the ground that the relief of injunction was not available before the revenue court. On behalf of the appellant, it is argued that under the color of the injunction, a remedy which was available before the revenue court, cannot be sought from the civil court. It is further contended on behalf of the appellant that the title of the plaintiff is disputed by the defendant, as such, the question of title which can be got declared from the revenue court, cannot be got so declared from the civil court by seeking relief of injunction. Had the plaintiff been not a recorded tenure holder in respect of the land for which she has sought relief of injunction, the contention of the learned counsel for the appellant could be accepted. But in Para-1 of the plaint itself, plaintiff has alleged that she is a recorded tenure holder and in possession of land of plot No. 25/3 and 46/11, shown with letters 'Aa' 'Ba' 'Sa' 'Da' in the plaint map. In support of said plea, the copies of the revenue papers- Khasra and Khatauni, have been filed by the plaintiff apart from getting witnesses examined orally. As such, it cannot be said that the plaintiff has sought declaration of title under grab of injunction.

7. In ***Ram Avalambh Vs. Jata Shankar & others 1968 Revenue Decisions 470 (Full Bench),*** it has been clarified by the Allahabad High Court that where the plaintiff is not a recorded tenure holder and seeks relief of injunction, it can be said that he is seeking declaration of title but where he is a recorded tenure holder, it cannot be said that the suit

is not within the jurisdiction of civil court for granting relief of injunction in respect of agricultural land.

8. On behalf of the appellant, it is contended that the defendant is also a recorded tenure holder in respect of the land Khasra Nos.- 180 and 181, with one Ved Prakash. It is further submitted that the defendant/appellant is recorded tenure holder in respect of plot No. 184 also. Perusal of the written statement, shows that it has no where been pleaded by the defendant that the land in suit lies over Khasra No. 180,181 or 184. It is not disputed that the defendant's land lies in the east of the plaintiff's land. The question involved in the suit is whether defendant by opening her door towards west of her plot, has started using the disputed strip of land, shown as 'alleged raasta' towards highway (shown in the plaint map on west of land- 'Aa' 'Ba' 'Sa' 'Da') and is the plaintiff entitled to the injunction against the defendant. In the above facts and circumstances, no remedy of injunction could have been sought by the plaintiff in the revenue court. As such, since the plaintiff has come up with a case that the defendant is attempting to use a part of the land of which plaintiff is the recorded tenure holder and in possessing, it cannot be said that the suit is barred by Section 331 of U.P. Zamindari Abolition And Land Reforms Act, 1950.

9. Shri Sudhanshu Dhulia, Senior Advocate, learned counsel for the appellant, drew attention of this Court to the principle of law laid down in ***Chandrika Singh Vs. Raja Vishwanath Pratap Singh (1992) 3 S.C.C. Pg. 90*** and argued that revenue court has jurisdiction in respect of

the controversy as to the use of the land whether it is an agricultural land or not? We have gone through said case law. We are of the view that it is not applicable to the present case for the reason that in said case of Chandrika Singh (supra), defendant was a recorded tenure holder over the land in suit as such, the Apex Court rightly held that the controversy as to the user could have been determined by the revenue court. In the present case, it is the plaintiff who has pleaded and established that she is a recorded tenure holder as well as in possession of the land in suit.

10. Our attention has also been drawn to the case law reported in ***Kamla Shankar Vs. IIIrd Additional District Judge, 1998 (89) R.D. Pg. 484.*** In said case also the defendant was a recorded tenure holder of the land in suit in respect of which the plaintiff has sought the relief. As such, the principle of law laid down in said case cannot be applied to the present case. Summarily in ***Sayed Muhammed Mashur Kunhi Vs. Badagara Jumayath Palli (2004) 7 Supreme Court Cases 708,*** relied on behalf of the defendant/appellant also does not help him as unlike in said case, the plaintiff has been successful in the present case, in proving her case at her own strength and not on the weakness found in the defendant's case.

11. Lastly, on behalf of the appellant, our attention was drawn to ***Heera Vs. Civil Judge, Gyanpur, Varanasi (1993) Allahabad Civil Journal Pg. 57,*** in which it has been held that revenue court could have issued the injunction. On going through said case law, we found that in pertains to civil suit of 1973 of land situated in Gyanpur

to which Banaras Tenency Act, 1949, was applicable. And under Section 153 and Banaras Tenancy Act, it was found that the revenue court could have issued the injunction. In the present case, the land is not covered by Banaras Tenency Act, 1949, not is there any parallel provision in U.P. Zamindari Abolition and Land Reforms Act, 1950.

12. We are in agreement with the finding of the trial court that the plaintiff had been successful in proving her case in respect of the land in question not only by the documentary evidence i.e. sale deed dated 10.10.1968 (Exh.-4) and sale deed dated 01.01.1965 (Exh.-3) and sale deed dated 19.10.1965 (Exh.-5), read with the revenue records- Khasra and Khautani of plot No. 25/3 measuring 0.300 and plot No. 46/11 measuring 0.514, but also from the oral evidence adduced by the witnesses examined on behalf of the plaintiff, which included the revenue officials. Not only this, the Survey Commissioner's report- paper No. 35-A, also supports the plaintiff's case wherein the disputed raasta land has been shown with red color, which is part of the land purchased by the plaintiff. From the map prepared by the Commissioner, it is clear that on either side of the disputed half a km. strip of land, which is allegedly been used as raasta by the defendant is not adjoining from any side to the defendant's land except on the point where a new gate on the western side, has been opened towards the west by the defendant. The map prepared by the Commissioner further shows that there is separate 13 ft. wide raasta land for use of the defendant and other villagers, which has its opening towards south of the defendant's land and said raasta land is also an approach to

reach on the main Hardwar-Rishikesh Road. We agree with the trial court's reasoning that it is not established from the evidence on record if the defendant has purchased half-a-km. land strip of raasta land (from his newly opened western gate to the main Hardwar-Rishikesh Road). In the written statement, the defendant himself has taken a vague plea that the disputed passage was being used by the defendant from the time of his predecessor from whom he purchased the plot owned by him. In this regard, in our opinion, evidence of the plaintiff, has rightly been believed that since she was living in Delhi and her property was being looked after by her servant, taking the benefit of her absence, the defendant started using the disputed part of the land owner by the plaintiff as raasta land for which she has opened a door at point 'Ka', shown in the map of the plaint.

13. In view of the reasons as discussed above, we find no merit in the appeal and the same is liable to be dismissed. The appeal is dismissed. No order as to costs.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. 10th April, 2006
Sweta